Office-Supreme Court, U.S.
FILED
MAY 8 1985
ALEXANDER L. STEVAS
CLERK

No. 84-1287

In The
Supreme Court of the United States
October Term, 1984

LOUIS LIPHETE, et al.,

Petitioners,

vs.

MERRITT STIERHEIM, et al.,

Respondents.

On Petition For Writ of Certiorari to the Third District Court of Appeal of Florida

REPLY BRIEF OF PETITIONERS TO THE OPPOSITION BRIEF OF RESPONDENT RANDY MILLER

Counsel:

John R. Greenwood, Esq.
John M. Ratliff, Esq.
Abbe Cohn, Esq.

Counsel of Record
IRA J. KURZBAN, Esq.
Kurzban, Kurzban & Weinger, P.A.
Suite 901
700 Brickell Avenue
Miami, Florida 33131
(305) 371-0268

Attorneys for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

TABLE OF CONTENTS

Page

STATEMENT 1

ARGUMENT:

I. Petitioners Do Not Challenge The State of Florida's Right To Set Criteria For Residency, But Rather Its Improper Use Of Federal Criteria Contrary To Federal Authority. 1

II. The Respondent Can Not Distinguish *Toll v. Moreno*, 458 U.S. 1 (1982), From This Case. 2

III. Respondent Fails To Distinguish *Elkins v. Moreno*, 435 U.S. 647 (1978), And Can Not Demonstrate Why It Does Not Control This Case. 3

IV. This Case Falls Squarely Within *Vlandis v. Kline*, 412 U.S. 441 (1973) As Modified By *Weinberger v. Salfi*, 422 U.S. 749 (1975). 4

V. There Is No Separate, Adequate And Independent State Ground On Which The Florida Court Could Have Conceivably Decided The Issue In This Case. 4

VI. Respondent Misunderstands The Significance Of Petitioner's Federal Immigration Status And Misunderstands That The Cuban-Haitian Entrant Status Can Permit A Person To Declare, In Good Faith, His Intention To Be A Permanent Resident Of Florida. 6

CONCLUSION 7

TABLE OF AUTHORITIES

Page

CASES:

Alcime v. Bystrom, 451 So.2d 1037 (Fla. 3d D.C.A. 1984) 5

Elkins v. Moreno, 435 U.S. 647 (1978) 3

Juarrero v. McNayr, 157 So.2d 79 (Fla. 1963) 5

Matter of Cooke, 412 So.2d 340 (Fla. 1982) 5

Toll v. Moreno, 458 U.S. 1 (1982) 2, 5

Vlandis v. Kline, 412 U.S. 441 (1973) 4

Weinberger v. Salfi, 422 U.S. 749 (1975) 4

RULES:

Rule 22.5 of the Rules of the Supreme Court of the United States 1

STATEMENT

Petitioners submit this Reply Brief pursuant to Rule 22.5 of the Supreme Court of the United States to address certain arguments raised by Respondent Randy Miller, As Executive Director of the Department of Revenue, State of Florida, in his Brief in Opposition to the Petition for Writ of Certiorari.

ARGUMENT

The respondent Randy Miller[1] raises several arguments in his brief in opposition to certiorari. Each is wholly without merit. Mr. Miller has misunderstood petitioners' arguments, failed to distinguish controlling precedent, and ignored the importance of this Court's recognition of the complexities and distinctions that Congress and the Executive have made among various categories of aliens who are not permanent residents of the United States.

I. Petitioners Do Not Challenge The State Of Florida's Right To Set Criteria For Residency, But Rather Its Improper Use Of Federal Criteria Contrary To Federal Authority.

Despite respondent's argument to the contrary, petitioners do not challenge the State of Florida's denial of homestead tax exemption to persons who can not meet the requirements of residency under state law. Rather,

1. Respondent Randy Miller's Brief in Opposition will be cited herein as "Miller Br."

petitioners challenge Florida's impermissible and incorrect use of federal criteria to establish state residency in derogation of federal purpose. The petitioners in this case meet all of the State's criteria for residency. They lack only status as permanent residents under federal law. It is the judicial gloss on state statutes[2] requiring that an alien must be a permanent immigrant under federal law before he can get a homestead tax exemption in Florida that is challenged by petitioners. The refusal to grant homestead exemption solely because petitioners lack permanent immigrant status under federal law is in derogation of federal authority which has specifically granted the petitioners the right to remain indefinitely in the United States. Petitioners Appendix A31-A53.

II. The Respondent Can Not Distinguish Toll v. Moreno, 458 U.S. 1 (1982), From This Case.

The respondent also argues that *Toll v. Moreno,* 458 U.S. 1 (1982) is distinguishable from the present case because "(t)he special privileges granted to G-4 aliens is distinguishable from the Petitioners herein." Miller Br. at 6. This analysis misses the mark. Although *Toll* undoubtedly involved G-4 non-immigrants, the underlying legal issue before this Court was whether Congress has precluded the covered alien from establishing residency in the United States. 458 U.S. at 574. This Court's analysis demonstrated that even though an alien may have a non-immigrant status such as a G-4, it did not preclude him

---

2. The Respondent readily concedes that neither the State's Constitution, nor state statutes refer to federal immigration alienage status when determining homestead status. Miller Br. at 7. Respondent, however ignores the fact that Florida's judicial decisions require it.

from establishing residency in the United States. The petitioners before this Court have expressly been informed that they can remain indefinitely in the United States.[3] Unlike even G-4 aliens who are, by definition, non-immigrants, Cuban-Haitian Entrants, by definition, are a limited class of aliens who have expressly been given permission to remain in the United States. The question is not then the distinction between G-4 aliens and Cuban-Haitian Entrants as the respondent suggests, but rather whether Cuban-Haitian Entrant status "precludes" Entrants, such as petitioners, from establishing residency. Although the Florida courts have asserted that any status short of permanent immigrant status precludes an alien from residence in the State, there is nothing in federal law that precludes the Haitian petitioners from becoming permanent residents of the state.

III. Respondent Fails To Distinguish Elkins v. Moreno, 435 U.S. 647 (1978), And Can Not Demonstrate Why It Does Not Control This Case.

The respondent's efforts to distinguish *Elkins v. Moreno,* 435 U.S. 647 (1978) is equally unpersuasive. *Elkins* rested on the recognition that "Congress did ***not*** restrict every non-immigrant class" *Id.* at 666 in a manner which would preclude an intent to remain in the United States. Although this Court decided the issue in the context of G-4 aliens, the same may be said of aliens with E, I and A non-immigrant visas and Cuban-Haitian Entrant status. *Elkins* teaches us that when Congress has

---

3. Statement of Victor H. Palmieri, U.S. Coordinator for Refugee Affairs A40-A47.

not placed such a restriction on an alien, the States may not do so.

IV. This Case Falls Squarely Within Vlandis v. Kline, 412 U.S. 441 (1973) As Modified By Weinberger v. Salfi, 422 U.S. 749 (1975).

Despite respondent's confusing argument to the contrary, this case falls squarely within *Vlandis v. Kline,* 412 U.S. 441 (1973) as modified by *Weinberger v. Salfi,* 422 U.S. 749 (1975). The respondent asserts that Florida's requirement has a rational basis because it "does not discriminate on the basis of alienage but is imposed on all non-permanent residents." Miller Br. at 16. This non-sequitur demonstrates how little force the respondent can muster in support of its position. The State of Florida's refusal to grant homestead tax exemption solely on the basis of an alien's lack of federal permanent immigrant status *does* discriminate on the basis of alienage. It establishes two classes of persons: United States citizens and permanent immigrants who meet the other requirements for state residence, and aliens who are not permanent immigrants under federal law and who, despite meeting all the requirements for state residence, are denied state benefits because they do not possess federal permanent immigrant status. This conclusive presumption against residency is exactly the type of presumption found wanting in *Vlandis* and *Salfi.*

V. There Is No Separate, Adequate And Independent State Ground On Which The Florida Court Could Have Conceivably Decided The Issue In This Case.

The respondent also argues that there is a separate, adequate and independent state ground by which petition-

ers could be denied the benefits of Florida's homestead tax exemption. The state's determination that only aliens in possession of permanent resident alien cards have the legal capacity to declare a permanent residence in Florida, however, can only be based on the state's mistaken interpretation of federal law. No state has the power to determine which aliens may enter the country and establish permanent residency. *Toll,* 458 at 20.

Whether the courts of the State of Florida correctly interpreted federal law in denying homestead exemptions in *Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963), *Matter of Cooke,* 412 So.2d 340 (Fla. 1982) and *Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d D.C.A. 1984) is not at issue. It is, however, clear that in all those cases the Florida courts were obliged to interpret federal law before they could turn to an analysis of the state's constitutional and statutory provisions. The denial of homestead exemptions in those three cases turned directly and solely on the alien status of the parties. That status must be determined by applying federal law. To do otherwise would violate the Supremacy Clause of the United States Constitution. *Toll, supra.*

As respondent Miller acknowledges, the Florida Supreme Court in *Juarrero* referred to the nature of the petitioner's visa as being temporary rather than permanent by analyzing federal law. Miller Br. at 19. Similarly in *Cooke,* the state court quoted the federal bankruptcy judge who explained Cooke's status under federal law. Miller Br. at 21. It is exactly this determination of petitioners' status under federal law that is at issue here.

VI. Respondent Misunderstands The Significance Of Petitioner's Federal Immigration Status And Misunderstands That The Cuban-Haitian Entrant Status Can Permit A Person To Declare, In Good Faith, His Intention To Be A Permanent Resident Of Florida.

The respondent's final argument is that Florida's refusal to grant homestead tax exemption to petitioners is proper "because Petitioners are not permanent residents (under federal standards)." Miller Br. at 28. This position demonstrates the respondent's fundamental misconception of the central issue in this case. The petitioners are *not* arguing that they are permanent residents under federal law and are therefore entitled to homestead exemption and residency under Florida law. Rather, they argue, as respondent concedes, that they are "allowed to reside in the United States on an indefinite basis until their permanent status is decided." Miller Br. at 28. As the petitioners have the right to remain in Florida and the United States "indefinitely" until they become residents, the respondent can not use the criteria of federal residency to deny them tax exemption in Florida, just as the State of Maryland could not use the lack of federal permanent residency by G-4 aliens as the basis to deny in-state tuition. There is no condition or limitation on Cuban-Haitian Entrant status which would bar the petitioners from declaring, in good faith, that Florida is their permanent residence.

———o———

CONCLUSION

Respondent Miller offers no argument which seriously suggests that this Court should not accept certiorari in this case. Indeed, this respondent recognizes the status of the petitioners under federal law, but for erroneous reasons believes that they can be treated differently than all other persons expressing their intention to be Florida residents[4]. This Court should accept the writ to clarify the erroneous position, existing since 1963, that the State of Florida may make impermissible distinctions based on alienage contrary to federal law.

Respectfully submitted,

Counsel:

John R. Greenwood, Esq.
John M. Ratliff, Esq.
Abbe Cohn, Esq.

Counsel of Record
IRA J. KURZBAN, Esq.
Kurzban, Kurzban & Weinger, P.A.
Suite 901
700 Brickell Avenue
Miami, Florida 33131
(305) 371-0268

Attorneys for Petitioners

---

4. The respondent also disingenuously argues that this case is not of vital importance because the state "is aware" of only two cases under the homestead provision brought by Cuban-Haitian entrants. Although its "awareness" is limited to those cases which have reached the appellate courts, others have sought the exemption and have been denied. This, of course, does not account for those thousands of Cuban-Haitian Entrants who have been discouraged from applying because of the status of the law.